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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Case No. 767

In the Matter of the
UNAUTHORIZED PRACTICE OF LAW

In re J. HARVEY CROW, *Appellant*

On Appeal From the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

J. HARVEY CROW
St. Paris, Ohio
In Propria Persona

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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JURISDICTIONAL STATEMENT

The appellant appeals from the judgment of the Supreme Court of Ohio which is the trial court in this action sentencing this appellant to three maximum sentences allowed by law of ten days in jail and $500.00 fine for criminal contempt of court, holding that the appellant violated two separate and distinct orders of the court.

There was a complete failure on the part of the trial court to comply with chapter 2705 of the Revised Code of Ohio, and there was absolutely no evidence offered or submitted to show a violation of any order of the Supreme Court, a clear violation of the Ohio and the United States Constitution. The appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The trial court, to wit the Supreme Court of Ohio, rendered no opinion. Application for rehearing was denied without opinion. The Court entered an entry on November 19, 1963, which is set forth in the appendix, pages 1a and 2a.

JURISDICTION

Appellant, J. Harvey Crow, was adjudged guilty of two separate and distinct criminal contempt of court on November 19, 1963 by the trial court, the Supreme Court of Ohio. A timely application for rehearing was denied December 4, 1963, and a second notice of appeal was filed January 13, 1964. Execution of sentence was stayed by the Honorable Judge Potter Stewart, Associate Justice of the United States Supreme Court on December 9, 1963.

Jurisdiction of this Court rests on 28 U. S. C., 1257 (2) or 1257 (3).

The convictions of criminal contempt violates the due process clause, because there was no evidence that the appellant disobeyed any order of the Supreme Court of Ohio.

If the appeal should be considered as having been improvidently taken, the Court is requested to consider such appeal as petition for certiorari, under title 28 U. S. C., 2103.

CASES BELIEVED TO SUSTAIN JURISDICTION

The following decisions sustain the jurisdiction of the Supreme Court of the United States, to review the judgment on appeal in this case.

Edward R. Fields, et al., Appellant, v. *City of Fairfield*, October Term, 1963, Case No. 30

Aaron D. Frank v. *State of Maryland*, 359 U.S. 360, (1959)

Ohio Ex. Rel. Eaton v. *Price*, Case No. 30, October, 1959

Wolf v. *Colorado*, 338 U.S. 25

STATUTES INVOLVED

Ohio R. C. 2705.01 Summary punishment for contempt.

"A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice."

Ohio R. C. 2705.02 Acts in contempt of court.

"A person guilty of any of the following acts may be punished as for a contempt:

(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer . . . ."

Ohio R. C. 2705.03 Hearing.

"In cases under section 2705.02 of the Revised Code, a charge in writing shall be filed with the clerk of the court, an entry thereof made upon the journal, and an opportunity given to the accused to be heard, by himself or counsel . . . ."

Ohio R. C. 2705.05 Trial.

"Upon the day fixed for the trial in a contempt proceeding the court shall investigate the charge, and hear

any answer or testimony which the accused makes or offers.

The court shall then determine whether the accused is guilty of the contempt charge. If it is found that he is guilty, he may be fined not more than five hundred dollars or imprisoned not more than ten days, or both."

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Amendment 5:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment 6:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

Amendment 14:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall

any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ohio Constitution

Article 1, Section 1

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life, land, liberty, acquiring, possessing and protecting property, and seeking and obtaining happiness and safety."

Article 1, Section 10

". . . . In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf . . . ."

Article 1, Section 16

"All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

QUESTIONS PRESENTED

1. Did the Supreme Court of Ohio deprive the appellant of due process of law as guaranteed to him under the 5th, 6th Amendments and enforced on the States under the 14th Amendment to the United States Constitution by finding the Respondent-Appellant guilty of criminal contempt of court on November 19, 1963, for willful and continued failure to comply with orders issued to him on May 6 and May 22, 1963, without

(1) The filing of any charges or

(2) giving Respondent-Appellant any time to prepare a defense and

(3) refusing to appoint counsel to assist the respondent appellant.

(4) presenting no evidence against respondent-appellant.

(5) refusing a trial or hearing on the orders of May 6th and May 22nd, 1963, all which is in violation of the statutes of Ohio.

2. Did the Supreme Court of Ohio deprive the Respondent-Appellant of due process of law as guaranteed to him under the 5th, 6th, and 7th Amendments and enforced on the States under the 14th Amendment to the United States Constitution, by finding the Respondent-Appellant guilty of criminal contempt of court on an application by the Bar Committee under specification "A" without.

(1) hearing any evidence

(2) assigning the matter for hearing or trial

(3) attempting to compel the respondent to testify against himself

(4) refusing to give respondent assistance of counsel

(5) making a finding of fact without any evidence

(6) attempting to establish a fact through failure of respondent to answer under oath.

3. Did the Supreme Court of Ohio deprive the Respondent-Appellant of due process of law as provided in the 5th and 6th Amendments and enforced in the States under the 14th Amendment of the Constitution by failure to make its order of October 21, 1959, definite and certain especially after the respondent has set forth in his Answer of January 21, 1959.

Said order is indefinite and uncertain, and the Ohio Supreme Court had never previously determined what is or what is not the practice of law.

5. Did the Supreme Court of Ohio deprive the appellant of due process of law as guaranteed to him under the

5th and 6th Amendments and enforced on States under the 14th Amendment of the United States Constitution, by finding said appellant guilty of criminal contempt of court, without providing a hearing of the charges or an opportunity to the Respondent-Appellant to offer evidence in support of the defenses which if proven would be a complete defense to any charges?

7. Did the Supreme Court of Ohio deprive the Respondent-Appellant in this criminal contempt proceeding of due process of law as guaranteed to him under the 5th and 6th Amendments of the United States Constitution and enforced on States under the 14th Amendment of the United States Constitution, in finding said appellant violated the order of said court and raising or lifting a suspension without a showing of any further violations of such order, in a proceeding in which the Respondent-Appellant was not afforded the following:

a. full knowledge of the charges against him;

b. reasonable time to prepare a defense;

c. benefit of compulsory process;

d. assistance of counsel;

e. presumption of innocence;

f. protection against being compelled to testify against himself.

STATEMENT OF FACT

Prosecution for criminal contempt of the Supreme Court was brought by the chairman of the unauthorized practice of law committee of the Ohio State Bar Association. An application was filed in the Supreme Court praying for an order to J. Harvey Crow to show cause why he should not be punished for practicing law in violation of a disbarment order. Said application contained 8 items, a-h inclusive, which read as follows:

a. The performance of legal services for a corporation, including the conduct of litigation, ostensibly as Cor-

porate Secretary, a position procured by J. Harvey Crow for the sole purpose of affording a shield for the unauthorized practice of law.

b. The performance of legal services for individuals under color of a power of attorney.

c. Holding himself out as an attorney at law for the purpose of representing individuals for whom he employs other counsel to make court room appearances.

d. The conduct of litigation for persons under color of an assignment of an interest in property or a cause of action, such assignment being colorable only and signing of the same of another attorney thereto and obtained solely as a shield for the unauthorized practice of law.

e. Performance of legal services upon incorporation of a company under color of participation as a principal.

f. The performance of legal services under the pretense of acting as an "investigator."

g. The preparation of pleadings in court cases for signature and filing by individuals ostensibly acting on their own behalf.

h. The preparation of instruments in court cases, the signing of the name of another attorney thereto and then filing such instruments with court functionaries.

This application was filed May 3, 1963. On May 6, 1963, without any hearing or without notice to the appellant, the court entered an order to show cause. (App. p. 3a) Immediately upon service of the application and the order to show cause, the appellant filed a motion requesting the Supreme Court of Ohio to extend the time to June 15, 1963, for the purpose of securing legal counsel to represent the appellant before this Court and to file an answer to the application. Having heard nothing by May 25, 1963

in response to said motion, the appellant left for Chicago, Washington D. C., and New York on business.

On May 22, 1963, an order was made granting an extension to May 29, 1963, in regard to specification "A" and June 15, 1963, to other specifications, as set out in Appendix, pp. 4a, 5a. Said order was left at his place of residence on May 27, 1963. He received a copy of said order while in Washington, D. C. sometime in June, as is shown in the record of the proceedings on November 19, 1963.

The appellant not appearing on May 29, 1963, in the Supreme Court of Ohio, a capias was issued, and on November 14, 1963, the appellant was detained by the sheriff of Champaign County. The Supreme Court set bond at $10,000.00 for appearance on November 19, 1963. This was the first time that the appellant was personally notified to be present in court, and he appeared. When the appellant returned to Ohio, he contacted a judge of the Supreme Court of Ohio. Said judge advised the appellant to employ an attorney, have him contact the court and arrange a date for appellant's appearance before the court. The appellant was explicitly following such instruction when arrested by the sheriff of Champaign County, Ohio.

The attorney, representing the committee, advised the court he was prepared to offer evidence on the application and supplement to application which was filed June 24, 1963, after a motion by the appellant to make the application definite and certain regarding paragraphs a-h inclusive. Supplement to application was in compliance with the motion to make the application definite and certain.

The court speaking through Chief Justice Taft said,

> "I think the Court would perhaps like to consider whether we shouldn't have this evidence presented to a referee rather than all seven of us sitting here listening to it in open court."

The appellant said,

> "That I think, in all fairness to the Court and to myself, that all of these matters should be considered;

that I should be given the opportunity to present all evidence that is possible in regard to any of these situations, to a Special Master, and that this Court should appoint a Special Master for the purpose of hearing all the facts regarding all the situations in these regards, in regards to any charges against me.

I am sure that if the Court understood the situation as I understand the facts, there would be no criticism on my part whatsoever."

The appellant, both by written motion and orally, requested the court to appoint counsel for him.

The appellant was in the process of showing the interpretation of the former order of this court regarding what is the practice of law, as interpreted by the attorney for the unauthorized practice of law committee, in a case filed in 1961, in the Court of Common Pleas in Madison County 21476 and in a case filed in the Court of Appeals in the second judicial district in Ohio. If the appellant had been permitted he could have shown that in that case the attorney for this committee said,

1. "Certain corporation, firms and individuals have been and are now engaged in the practice of law without having been qualified to do so as attorneys and counselors of law and without having been admitted to the practice of law by the Supreme Court of Ohio."

2. "No person, firm or corporation has a right to practice as an attorney or counselor at law in any manner or in any respect or to render legal services of any nature or to commence, conduct, or defend any action or proceeding in which he, they, or it is or are not a party unless said person has been admitted to the practice of law by order of the Supreme Court of Ohio in accordance with the statutes of the State of Ohio and the rules of the Supreme Court."

The appellant was not allowed to proceed further to advise the court as to the committee's own interpretations, but was interrupted by Chief Justice Taft who said,

"Mr. Crow, I think that these relate to the portions of the petition other than the Specification "A," don't they?

Mr. Crow: No, this relates directly to Specification "A."

Chief Justice Taft: Well, I'll tell you, I think we have heard what we want to hear here. I don't think— I assume you said the important stuff, and I'd like to proceed with what I have to say."

Sentence was pronounced without further comment.

There are two separate and distinct findings of criminal contempt in the entry of November 19, 1963.

1. Willful and continued failure to comply with orders issued to him May 6 and May 22, 1963. The Ohio R.C., chapter 2705, provides for contempt of court. No hearing was afforded or provided the appellant under said chapter as provided therein.

2. Practicing law as stated in said show cause order of May 6, 1963, as appears from the record filed in this court in the case of *Eidmiller* v. *Kerns* on appeal from the Court of Appeals of Union County, Ohio.

In the first place a check of the clerk's office does not show a record of any such case having been filed in the Supreme Court of Ohio. See Affidavit, Appendix, p. 6a. In the second place there are no facts in the application as set out in the order to show cause served on the appellant May 6, 1963. There is absolutely no evidence that the appellant, J. Harvey Crow, filed notice of appeal, assignments of error and brief on behalf of the Ohio Little Five Hundred Raceway Inc., nor any admissions by the appellant.

The appellant contended that he was entitled to have the Court appoint counsel in this criminal contempt proceeding.

The appellant contended that it was the duty of the committee to produce evidence that the Appellant did any act which constituted the practice of law.

There is absolutely no evidence in the record to show any violation of any court order.

The record shows a complete lack of compliance with the Ohio statutes.

The court conducted no hearing and the appellant was not afforded full knowledge of the charges against him, reasonable time to prepare a defense and benefit of compulsory process.

HOW THE FEDERAL QUESTIONS ARE PRESENTED

Since the Supreme Court of Ohio was the trial court, the appellant vigorously contended that the procedure and judgment by the trial court violated his constitutional rights. The appellant contended that the prosecution for the criminal contempt of court, judgment of the trial court, and his incarceration was unreasonable and unlawful and in violation of his constitutional rights under the 5th, and 6th Amendments of the Constitution of the United States and enforced on the States under the 14th Amendment of the United States of America, and was repugnant to each of the amendments and hence invalid.

The trial court refused to give the appellant assistance of counsel for his defense as requested by the appellant in a written application made to the court, and an oral application made to court, which is in violation of the 6th Amendment to the Constitution of the United States and enforced on the States under the 14th Amendment.

Chief Justice Taft said,

> "Now, last May, we issued an order for you to appear before us and to answer one of the specifications of a petition that was filed here which was the

only one that appeared sufficiently definite for us to consider at that time."

In the Application for Rehearing the appellant clearly sets out the violation of his constitutional rights by a trial court in all three judgments rendered against him.

From that judgment[1] this appeal is brought here.

QUESTIONS ARE SUBSTANTIAL

There are two separate, distinct convictions and sentencing under the order of November 19, 1963. We will discuss the question involved in each one of these items separately

1. The willful and continued failure to comply with orders issued to the appellant May 6 and 22, 1963.

The order to show cause issued on Monday, May 6, 1963, as shown in Appendix, pp. 3a and 4a, was issued three days after the application was filed on Friday, May 3, 1963, which contains specification A. This order to show cause orders the appellant by written answer under oath, to file by May 13, 1963, in the trial court a statement whether or not he filed.

a. notice of appeal

b. assignments of error and brief on behalf of the Ohio Little Five Hundred Raceway Inc.

At the request of the appellant to extend time to June 15, 1963 this was postponed until May 29, 1963, and the rest of the application was postponed until June 15, 1963, as shown by Appendix, pp. 4a and 5a, to enable appellant to obtain counsel.

There was a citation also issued by the court for the appellant to appear in person on May 29, 1963, at 10 AM

[1] Appendix, pp. 1a and 2a

to answer specification "A." Neither of these instruments were delivered to the appellant in person but were left at his usual place of residence, St. Paris, Ohio, and at a time when the appellant was outside of the state on business.

In the court order of November 19, 1963, Appendix, pp. 1a and 2a there is nothing in the seven items of the court's finding that shows a willful and continued failure to comply with the orders of this court issued to him on May 6 and 22, 1963. The Ohio R.C., 2705.01, provides that a person may be summarily punished for contempt of court, if his behavior is in the presence of or near the court to obstruct the administration of justice. Ohio R.C., 2705.02, provides that a person guilty of disobedience of an order of a court may be punished for contempt of court. The trial court in its order of November 19, 1963, said that the appellant was guilty of failure to comply with the *orders* of this court.

Therefore said appellant was entitled to the benefits of Ohio R.C., 2705.03, which provides:

a. charge shall be filed with the clerk,

b. an entry made upon the journal,

c. an opportunity given to the accused to be heard by himself or counsel.

The record in this case shows that none of these requirements were fulfilled.

Ohio R.C., 2705.05, provides:

a. fix a day for a trial,

b. investigate the charges,

c. hear any answer or testimony which the accused makes or offers.

None of these provisions were complied with by the court. As a matter of fact the appellant did not understand that

the court had under consideration any contempt of any failure to comply with orders issued on May 6 and 22, 1963, until he was sentenced. Although by reading of the record Chief Justice Taft did say among other things,

"or the third matter your failure to appear last May."

In the application for rehearing the appellant set out that the failure to comply with the R.C., 2705.02-03-05, was a violation of the due process clause.

In the case in the matter of *Lands*, 146 O.S., 589-1944, the Supreme Court of Ohio in the opinion written by the Honorable Charles Bell indicated the legislature has a right to regulate contempt proceedings. See 11 O. Jur. 2D page 132:

> "The statutory provisions in respect to contempt of court merely regulate, rather than create, the power of the court to punish for contempt. The mode of procedure may be prescribed in the statute, in the matter of filing of charges and requiring a hearing thereon, and while courts do not derive their power to punish for contempt from any statute, they must conform to statutes which do not abridge their power but merely regulate its exercise.."

In *Garner* v. *Louisiana*, 368 U.S. 157, 163 (1961), was stated as follows:

> "The Court held that a conviction in a State court must be set aside under the Due Process Clause if it is 'totally devoid of evidentiary support.' Accord, Thompson v. City of Louisville, 362 U.S. 199 (1960). The rationale of Garner and Thompson is not whether the evidence in the record is insufficient to support the conviction, but whether there is any evidence at all tending to prove one or more of the essential elements of the offense. 'In addition,' as the Court stated in Garner, the concern is not 'whether the evidence proves the commission of some other crime, for it is as much a denial of due process to send an accused to prison following conviction for a charge that was

never made as it is to convict him upon a charge for which there is no evidence to support that conviction' (id. at 164).

The appellant requested the court to appoint a special master, as the court indicated it would do previously, to hear all the matters and give this appellant the opportunity to present all the evidence, so the court would understand the true facts. Then the court would have no criticism of any acts done by the appellant.

Surely the appellant did not need to do anything in regard to the show cause order of May 6, 1963, because in the order itself the court must have contemplated the appellant would not file a written answer, positively verified under oath; because they say that if not so verified will be taken as true as evidencing violation of the former order of this court.

In the order May 6, 1963, the trial court was attempting to eliminate the proof required to convict either beyond a reasonable doubt or by a prepondance of the evidence. The order attempted to require the appellant to testify against himself by filing a written answer under oath. The appellant is presumed to be innocent. His guilt must be proved beyond a reasonable doubt, and he can not be compelled to testify against himself. (See *Gompers* v. *Bucks Stove Co.*, 221 U.S. 418, 444, and *Michealson* v. *United States*, 266 U.S. 42, 66.)

The order of May 22, 1963, was delivered to the appellant's home on May 27, 1963, just two days prior to the hearing date which in itself is unreasonable, but also at a time when the appellant was outside the state. The appellant did receive these notices in the mail after the hearing date and did contact a judge of the Supreme Court of Ohio upon his return to Ohio and was advised by a Judge of the Supreme Court of Ohio to employ an attorney and have said attorney employed contact the court and make a date for an appearance before the court. The appellant

followed these instructions explicitly. This information is contained in an affidavit attached to the application for rehearing and was known by the court on November 19, 1963.

The United States Supreme Court is the only place to which this appellant can appeal to protect his property and his freedom against the infringement of his constitutional rights.

There were no charges filed in regards to the orders of May 6 and May 22, 1963. There was no compliance with the Ohio Statutes. There was no evidence offered, yet there was a finding made by the Court against the appellant for criminal contempt.

Is this a violation of the due process clause? We believe it is, and we trust this court will rule on this important question.

2. Practicing law as stated in said show cause order of May 6, 1963, as appears from the record filed in this court in the case of *Eidmiller v. Kerns* on appeal from the Court of Appeals of Union County.

According to the clerk's statement there is no such case filed in the Supreme Court of Ohio. Record shows that Judge Taft said,

> "pleadings were filed in this court indicating Mr. Crow was practicing law."

The record shows that Judge Taft said,

> "to answer one of the specifications of a petition that was filed here which was the only one that appeared sufficiently definite for us to consider at that time."

Looking at specification "A" certainly would not indicate it being definite and certain, nor indicate the facts found in the order of May 6, 1963.

The record also shows Judge Taft said, "the matter relative to this case where you filed the case against Judge

Kern and the other judges which the notice of appeal was filed in this court."

The appellant never filed any case against Judge Kerns or the other judges, and it was so stated in the application for rehearing. The fact that there were false impressions in the minds of the judge is clearly shown, and just as clearly it indicates the necessity for a hearing to prove evidence to convict a person of criminal contempt.

The order to show cause issued May 6, 1963, says in part.

> "and it further appearing to this Court that on October 25, 1962, the said J. Harvey Crow, purporting to act as Secretary of an Ohio corporation, The Ohio Little 500 Raceway, Inc., filed in the Common Pleas Court of Union County, Ohio, a Notice of Appeal, and subsequently in the same case filed in the Court of Appeals of the Third Appellate Judicial District of Ohio, Union County, assignments of error and a brief on behalf of said corporate appellant."

The trial court neglected to say how such information was obtained. No such fact was alleged in the application, no evidence was presented when the appellant was present or personally notified to be present. It must have been done between May 3 and May 6, 1963, since the order was issued May 6, 1963, and the application was not filed until May 3, 1963.

There is absolutely no evidence in the record of this cause that the appellant did anything that could constitute practice of law either as an individual or as a secretary of a corporation. The appellant does not believe that proof of a fact can be made in any court by the court saying, "unless you deny the statement it will be taken as true." That is in direct conflict with both the Ohio and United States Constitutions as set forth in this jurisdictional statement.

There is absolutely no evidence for the court finding item 6, as shown in the entry of November 19, 1963, that the appellant did practice law in violation of the disbarment order.[2]

Convictions of criminal contempt for violating the disbarment order violate the 5th and 6th Amendments of the Constitution of the United States and enforced on the States under the due process clause of the 14th Amendment, because there was no evidence that the appellant disobeyed any such order.

The governing principle is plain: "Just as 'Conviction upon a charge not made would be sheer denial of due process,' so it is a violation of due process to convict and punish a man without evidence of his guilt." *Thompson* v. *Louisville*, 362 U.S. 199, 206.[3] See, also, *Garner* v. *Louisiana*, 368 U.S. 157; *Taylor* v. *Louisiana*, 370 U.S. 154. To be sure, "the state's ultimate conclusion on guilt is examined from the due process standpoint in the light of facts undisputed by the state," *Gallegos* v. *Nebraska* 342 U.S. 55, 61, and the constitutional claim "does not turn on a question of sufficiency of evidence." *Garner* v. *Louisiana*, *supra*, at 163. The inquiry is, rather, whether "the convictions * * * are so totally devoid of evidentiary support as to render them unconstitutional under the Due Process

[2] Appendix, pp. 1a, 2a.

[3] The Court quoted from *Dejonge* v. *Oregon*, 299 U.S. 353, 362. See also *Cole* v. *Arkansas*, 333 U.S. 196, 201 ("It is as much a violation of due process to send an accused to prison following conviction of a charge on which he is never tried as it would be to convict him upon a charge that was never made"), and, *United States ex rel. Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 106 ("Deportation * * * on charges unsupported by any evidence is a denial of due process * * * ").

Clause of the Fourteenth Amendment.'"[4] Ibid. Cf. *Konigsberg* v. *State Bar*, 353 U.S. 252; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232. Judged by this standard, it seems to us plain that the present convictions cannot stand.[5]

The courts' findings are not a substitute for evidence,[6]

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[4] The principle of the *Thompson* and *Garner* cases has been applied by Alabama Courts. In *Mauldin* v. *State*, 28 Ala. App. 30, 177 So. 309 (1937), the defendant was tried and convicted for embezzlement of eleven hogs. On appeal, the Court of Appeals of Alabama noted (28 Ala. App. at 31): "* * * we have the anomalous situation of a defendant being convicted of a crime charged against him without any evidence to sustain it." The defendant's conviction was reversed and the court said (28 Ala. App. at 32): "To permit this conviction to stand on the record as it appears before us would be to deny this defendant the right of due process of law, guaranteed to him by the Constitution of the United States (Amendment 14) and by the Constitution of this State (section 6)."

[5] We believe that it is clear that the *Thompson* rule is equally applicable to criminal contempt proceedings as to ordinary criminal cases. In both situations, a man's liberty is at stake. Except for the right to trial by jury, a defendant in a criminal contempt proceeding receives the full protection of due process. *Green* v. *United States*, 356 U.S. 165. Thus, he is presumed to be innocent, his guilt must be proved beyond a reasonable doubt, and he cannot be compelled to testify against himself. *Gompers* v. *Bucks Stove and Range Co.*, 221 U.S. 418, 444; *Michaelson* v. *United States*, 266 U.S. 42, 56. He receives notice of and has a reasonable opportunity to meet the charges against him, and has the right to counsel and the right to present his own witnesses and or to cross-examine others. *Cooke* v. *United States*, 267 U.S. 517, 537. There is no reason why he should be deprived of the constitutional rule recognized in *Thompson*.

[6] Cf. Mr. Justice Frankfurter, concurring in *Garner* v. *Louisiana*, 368 U.S. 157-175: "A judge's private knowledge, or even 'knowledge by notoriety,' to use Dean Wigmore's phrase, IX Evidence, 2569 (Third ed. 1940), not presented as part of the prosecution's case capable of being met by a defendant, is not an adequate basis, as a matter of due process, to establish an essential element of what is punished as crime. Thompson v. City of Louisville, 362 U.S. 199."

and as already indicated there simply is no evidence in the record to support the Court's conclusion.

In the Record, page 23, Chief Justice Taft said,

> "Well, I'll tell you, I think we have heard what we want to hear here. I don't think—I assume you said the important stuff, and I'd like to proceed with what I have to say."

If evidence had been taken by the court or special master appointed, the court would not have to "*assume*" anything. They could make the finding upon the evidence produced.

The proceedings in the trial court clearly show that the appellant's Constitutional Rights were violated as previously determined by this court.

> "In the case of Truax v. Corrigan, 257 U.S. 312 at 332, Chief Justice Taft defined 'due process' as guaranteed by the fourteenth Amendment as follows:
>
> 'The due process clause requires that every man shall have the protection of his day in Court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.'"

3. The order of the Supreme Court for the appellant to cease the practice of law is not definite and certain and is subject to different interpretations and therefore not enforceable until definitely defined by the court that made the order.

In the appellant's answer filed January 21, 1959, in this action the appellant said,

> "I have appeared in A State Court of record in behalf of myself or as an officer of a corporation, in cases where I have an interest, as permitted to do under the

Constitution of Ohio, the Statutes of Ohio and the Constitution of the United States of America."

The trial court, the Supreme Court of Ohio, in their entry of October 21, 1959, did not say that appearing in a state court of record for myself or as an officer of a corporation was a violation of the disbarment order.

The question was presented to the trial court in 1959, and they failed to say that an officer of a corporation could not appear in court on its behalf to protect its property. The fact that the answer as filed and no comment or criticism was made by the court would indicate that they were in accord with the statement set forth in appellant's answer. This clearly shows that an officer of a corporation can appear in court to protect his property. This was the interpretation placed on the authority of an officer of a corporation by the attorney for the committee that filed this application, and by the Judges of the Second Judicial District of Ohio and by the trial judge in Union and Madison County Court.

The appellant was advising the court that the attorney for the unauthorized practice of law committee when interrupted (as shown in the Statement of Fact) that in Madison County in case No. 21476 in 1961, and the Court of Appeals of said district held that a secretary of a company had a right to appear before the court and present a claim for services due a corporation; and if such claim was disallowed to appeal such disallowance to the Court of Appeals. It was held at that time not to be a violation of a disbarment order.

Phillip K. Folk, the attorney for the unauthorized law committee in this action, did file an application as set forth in the Statement of Fact.

The trial judge in the Madison County Case and the trial judge of the Union County Ohio Court held that a secre-

tary of a corporation could present a claim for a corporation when its property was involved and that was not any violation of any disbarment order.

Assuming, but not admitting, because there is absolutely no proof of the fact in the order to show cause filed May 6, 1963, that the notice of appeal, assignment of error and brief were filed by J. Harvey Crow as secretary and assuming but not admitting that the third appellate district held that could not be done by the secretary of a corporation, this certainly would not be contemptuous since this was directly opposite to the opinion filed by Phillip K. Folk, attorney for the unauthorized law committee and an opposite holding to the Second District Court of Appeals and contrary to the holding of the County Judge of Union County.

The actions by these various lawyers and judges clearly show a difference of opinion as to what is and what is not the practice of law. The order of the court in October 21, 1959, said,

> "he is ordered to cease forthwith the practice of law and the holding out of himself, in any manner and in any court, as an attorney at law."

There is no charge that the appellant held himself out in any manner, in any court as an attorney at law. The Supreme Court of Ohio has never determined whether a secretary of a corporation could appear on behalf of the corporation to protect its property.

Therefore the order not to practice law in and of itself is not definite and certain. We believe the Supreme Court of Ohio has a right to interpret its own orders, but until it does so we have a right to rely upon the interpretation of the attorney for the committee who filed the charges to determine what is and what is not the practice of law. If the interpretation of the committee is followed, and the

Supreme Court finally places different interpretation and says that what the committee said was not the practice of law is the practice of law, then the order is not definite and certain and is subject to different interpretations. Only after the court that made the order interprets its own orders, and then there is a violation of such order, could there be a finding of criminal contempt against a violator of the order.

Surely the appellant had a right to rely on the interpretation of the committee who filed the charges, so he would have a guidepost to follow.

An order that is subject to different interpretations is not definite and certain. An order violation which will support contempt must be clear and definite. See *in Re Miller and Harbaugh*, 54 Fed. 2nd 612. A conviction under an order that is not definite and certain is contrary to and in violation of the due process clause of the Constitution of the United States and its Amendments, there to and enforced on the States through the 14th Amendment to the said Constitution.

The questions submitted here are substantial, are of great public importance both to the citizens of the State of Ohio and to this appellant. We believe that these questions merit plenary consideration by this court.

Respectfully submitted,

J. Harvey Crow
St. Paris, Ohio
In Propria Persona

APPENDIX

THE SUPREME COURT OF THE STATE OF OHIO

Of The Term of January 1963
To wit: November 19, 1963

No. 35825

Entry

STATE OF OHIO }
CITY OF COLUMBUS } ss

IN THE MATTER OF THE UNAUTHORIZED
PRACTICE OF LAW
IN RE: J. HARVEY CROW

This cause came on for further hearing on the portion of the application filed herein on May 3, 1963, relating to specification "A" thereof, on the order of May 6, 1963, issued pursuant to said application to respondent to show cause, on the citation issued May 22, 1963, ordering respondent to appear on May 29, 1963, and on evidence heard in open court, and the court finds:

1. Said application of May 3, 1963, and said order of May 6, 1963, were personally served upon respondent on May 6, 1963.

2. Respondent filed a motion on May 13, 1963, for an extension to June 15, 1963, for the filing of an answer to said show cause order of May 6, 1963.

3. Residence service of said citation of May 22, 1963, was made on May 27, 1963, upon respondent by leaving a copy thereof with his wife at his residence.

4. Respondent admits that he received a copy of said citation while in Washington where he went in June 1963.

5. Respondent has done nothing to comply with the show cause order of May 6, 1963, and made no attempt to appear before this court prior to November 13, 1963.

6. Respondent did practice law as stated in said show cause order of May 6, 1963.

7. Although given an opportunity to do so, respondent has given no reason for failing to comply with the orders of this court on May 6, 1963, and no reason for his ignoring the citation of this court of May 22, 1963.

It is therefore ORDERED, ADJUDGED and DECREED that respondent be fined $500 and imprisoned in the Franklin County Jail for ten days for contempt of this court demonstrated by his willful and continued failure to comply with the orders of this court issued to him on May 6, 1963, and May 22, 1963; that respondent be fined $500 and imprisoned in Franklin County Jail for ten days for contempt of this court in practicing law as appears from the record filed in this court in the case of Eidmiller v. Kerns on appeal from the Court of Appeals of Union County; that the suspension of imposition of sentence upon respondent, which was ordered by this court on October 21, 1959, be raised and that respondent be fined $500 and imprisoned in the Franklin County Jail for ten days for the contempt of this court adjudged in that order of October 21, 1959; and that the foregoing jail sentences be served consecutively.

It is further ordered that the respondent be placed in the custody of the Sheriff of Franklin County and be committed to the Franklin County Jail for a period of 30 days and for such additional period of time thereafter until the costs and fines assessed herein are paid, or until otherwise discharged by law.

It is further ordered that this proceeding with respect to all other matters be continued until further order of this court.

TAFT
Chief Justice

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW

IN RE: J. HARVEY CROW

No. 35825

Order to Show Cause

The Court having received and considered the Application filed in this proceeding May 3, 1963, by the members of the Unauthorized Practice of Law Committee of the Ohio State Bar Association on behalf of the members of the Bar of this Court, and it appearing that said Application, if the facts stated therein are true, presents a situation seriously threatening the administration of justice in Ohio and consequent serious damage to the public, the Court finds that an Order should be issued forthwith to J. Harvey Crow, respondent in this proceeding, to show cause why he should not be punished for further contempt of this Court and, if his conduct appears to have been in further violation of the rules and orders of this Court with respect to the practice of law and with respect to the conduct specifically of the said J. Harvey Crow, such further Orders should be issued as may be necessary for the protection of the public;

And it further appearing to this Court that on October 25, 1962, the said J. Harvey Crow, purporting to act as Secretary of an Ohio corporation, The Ohio Little 500 Raceway, Inc., filed in the Common Pleas Court of Union County, Ohio, a Notice of Appeal, and subsequently in the same case filed in the Court of Appeals of the Third Appellate Judicial District of Ohio, Union County, Assignments of Error, and a brief on behalf of said corporate appellant, as appears from an order made by the Court of Appeals of the Third Appellate Judicial District, on the 23rd day of February, 1963, in Case Number 298 (Union County);

It is ordered that the said J. Harvey Crow by written answer, positively verified under oath by the said J. Harvey Crow, filed in this Court on or before May 13, 1963, state whether or not he filed the Notice of Appeal, Assignments of Error and brief on behalf of The Ohio Little 500 Raceway, Inc.; and that any of the facts with reference to the said appeal which are recited above and are not specifically denied by written answer positively verified shall be taken as true and as evidencing violation of the former order of this Court finding the said J. Harvey Crow in contempt and suspending imposition of punishment therefore, and said suspension of sentence will thereupon be revoked and said J. Harvey Crow immediately punished for said former contempt;

And this proceeding is with respect to all other matters mentioned in the Application filed herein under date of May 3, 1963, continued until further order of this Court.

KINGSLEY TAFT
Chief Justice

THE STATE OF OHIO, CITY OF COLUMBUS

1963 TERM

To wit: Wednesday, May 22, 1963

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW

IN RE: J. HARVEY CROW

No. 35825

Entry

This matter came on for the Court's consideration on the motion of J. Harvey Crow for an extension to June 15, 1963 for the filing of an answer to the show cause served on him on May 6, 1963.

On consideration whereof, it is ordered that an extension to May 29, 1963 be granted for answering specification A of the application and that as to the other specifications J. Harvey Crow be granted to June 15, 1963 as requested.

C. William O'Neil

BEFORE THE SUPREME COURT OF OHIO

Citation

To the Deputy Marshal:
(Copy for Service)

You are commanded to notify J. Harvey Crow, 363 N. High Street, Columbus, Ohio or St. Paris, Ohio, that he has been cited to appear in person before The Supreme Court of Ohio, State House Annex, Columbus on Wednesday, May 29, 1963 at 10:00 o'clock A.M. then and there to answer to Specification A of an Application filed in this Court on May 3, 1963 which application together with an Order to Show Cause was served on J. Harvey Crow on May 6, 1963.

You shall make due return of service forthwith.

C. William O'Neil

Marshal's Return

Affidavit

State of Ohio
Franklin County, ss.:

J. Harvey Crow, being first duly cautioned and sworn, according to law, deposes and says that in December 1963, he appeared at the Clerk's Office of the Supreme Court of Ohio, and requested a Deputy Clerk to give the filing date

of the case of Eidmiller vs. Kerns, filed in the Supreme Court in Ohio.

Deputy McConnell and affiant checked the docket and no such case was shown as ever docketed in the Supreme Court of Ohio. Deputy McConnell advised this affiant that to his knowledge, such a case was never filed in said Court.

Further affiant saith not.

J. Harvey Crow

Sworn to before me an subscribed in my presence this 13th day of January, A.D. 1964

Guy R. Martin

Guy R. Martin

Seal *Notary Public—State of Ohio*

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Office-Supreme Court, U.S.
FILED
FEB 15 1964
JOHN F. DAVIS, CLERK

No. 767

IN THE

Supreme Court of the United States

October Term, 1963

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN RE J. HARVEY CROW,
Appellant.

MOTION TO DISMISS APPEAL AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM B. SAXBE,
Attorney General,
LARRY H. SNYDER,
Chief Counsel,
State House Annex, Columbus, Ohio,
Attorneys for Respondents.

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio

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IN THE

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No. .....

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN RE J. HARVEY CROW,
Appellant.

MOTION TO DISMISS APPEAL AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

William B. Saxbe, Attorney General of Ohio, as attorney for the Supreme Court of Ohio and in opposition to appellant's petition for writ of certiorari herein and in support of his motion to dismiss the appeal herein, respectfully states the following:

I.

STATEMENT OF THE CASE

The action herein was initiated by an application filed October 1, 1958 by the Unauthorized Practice of Law Committee of the Ohio State Bar Association for an order of the Supreme Court of Ohio that the appellant, J. Harvey Crow, was in contempt of court for engaging in the unauthorized practice of law. On October 21, 1959, the appellant was found guilty of contempt by the Supreme Court of Ohio

and sentence therefor was suspended conditioned upon his discontinuance of the practice of law.

On May 3, 1963, a second application was filed by the Unauthorized Practice of Law Committee of the Ohio State Bar Association for an order finding the appellant in contempt of the Supreme Court of Ohio for engaging in the practice of law and an order finding the appellant in violation of the October 21, 1959 order of the court.

On May 6, 1963, appellant was personally served with an order to show cause by May 13, 1963 why he should not be found in contempt of the former (October 21, 1959) order of the court for filing a notice of appeal to the Supreme Court of Ohio and for filing assignments of error and a brief in Case No. 298, Court of Appeals for Union County, Ohio (*Eidmiller* v. *Kerns*) and why the suspension of imposition of sentence against him should not be raised. On May 13, 1963 appellant filed a motion to make the application of the committee of the Ohio Bar association more definite and certain and for an extension of time until June 15, 1963, for filling an answer to the application. On May 22, 1963 a citation was issued granting the extension to file answer to the application until June 15, 1963 as to all parts of the application except specification "A" relating to the appellant's activities in Case No. 298, Court of Appeals for Union County, Ohio, and appellant was ordered to show cause by May 29, 1963 why his activities in the Union County case, should not be found in contempt of court and the suspension of imposition of the former order of the court raised, and was ordered to appear for a hearing on May 29, 1963 before the court. The citation was served upon appellant by resident service on May 27, 1963. Appellant failed to answer the show cause order and failed to appear for hearing on May 29, 1963 and failed to answer the application for contempt by June 15, 1963.

Appellant was taken into custody on November 13, 1963 by the sheriff of Champaign County, Ohio, pursuant to process of the Supreme Court of Ohio and was given a hearing by the Supreme Court of Ohio on November 19, 1963. After hearing, the appellant was found guilty of contempt of court for failing to appear at the hearing of May 29, 1963 and for practicing law in the Case of *Eidmiller* v. *Kerns*, No. 298, Court of Appeals of Union County, Ohio, as appears in the record of that case filed in the Supreme Court of Ohio, and the suspension of the imposition of sentence upon appellant ordered by the court on October 21, 1959 was raised and appellant was fined $500.00 and sentenced to ten days in jail on each count.

On January 22, 1964 the Supreme Court of Ohio overruled a motion by appellant for an order vacating the judgment of November 19, 1963 and for rehearing.

Appellant here seeks to appeal from the judgment of the Supreme Court of Ohio rendered November 19, 1963 and in the alternative for a writ of certiorari to review the judgment.

II.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

28 U.S.C.A. Section 1257:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn

in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Appellant has not drawn in question the validity of any statute of the state of Ohio as being repugnant to the Constitution, treaties or laws of the United States within the meaning of Section 1257, above. The appeal then must be considered as a petition for a writ of certiorari.

III.

STATUTES OF OHIO

Section 2705.01, Revised Code:

A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.

Section 2705.02, Revised Code:

A person guilty of any of the following acts may be punished as for a contempt:

(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer.

(B) Misbehavior of an officer of the court in the performance of his official duties, or in his official transactions;

(C) A failure to obey a subpoena duly served, or a refusal to be sworn or to answer as a witness, when lawfully required;

(D) The rescue, or attempted rescue, of a person or of property in the custody of an officer by virtue of an order or process of court held by him;

(E) A failure upon the part of a person recognized to appear as a witness in a court to appear in compliance with the terms of his recognizance.

Section 2705.03, Revised Code:

> In cases under section 2705.02 of the Revised Code, a charge in writing shall be filed with the clerk of the court, an entry thereof made upon the journal, and an opportunity given to the accused to be heard, by himself or counsel. This section does not prevent the court from issuing process to bring the accused into court, or from holding him in custody, pending such proceedings.

Section 2705.05, Revised Code:

> Upon the day fixed for the trial in a contempt proceeding the court shall investigate the charge, and hear any answer or testimony which the accused makes or offers.
>
> The court shall then determine whether the accused is guilty of the contempt charge. If it is found that he is guilty, he may be fined not more than five hundred dollars or imprisoned not more than ten days, or both.

IV.

QUESTION PRESENTED

The question presented is whether the petition for writ of certiorari herein raises a substantial federal question.

V.

THE JUDGMENT OF THE SUPREME COURT OF OHIO IS NOT IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

It should be noted at the outset that Section 2705.01, Revised Code of Ohio, is a codification of the common law definition of a direct contempt. *In re Lands*, 146 Ohio St. 589, 67 N.E. (2) 433 (1946); *Seidenfeld* v. *Seidenfeld*, 28 Ohio L. Rep. 401 (1929). Section 2705.05, Revised Code of Ohio, has no application to a proceeding under Section 2705.01, Revised Code of Ohio, but refers to proceedings

under Section 2705.02, Revised Code of Ohio. *Myers* v. *State*, 46 Ohio St., 472, 22 N.E. 43 (1889).

The judgment of the Supreme Court of Ohio is in three branches as follows:

> 1. Appellant is guilty of contempt for failure to comply with the orders of the court on May 16, 1963 and May 22, 1963 ordering him to show cause why he should not be found in contempt for violating the court order of October 21, 1959 and ordering him to appear on May 29, 1963 to answer the show cause order, respectively.
>
> 2. Appellant is in contempt for practicing law as appears from the record filed in the Supreme Court of Ohio in the case of *Eidmiller* v. *Kerns*, No. 298, Court of Appeals, Union County, Ohio.
>
> 3. The suspension of imposition of sentence for contempt of the Supreme Court of Ohio rendered on October 21, 1959.

Petitioner seeks a review of this action of the Supreme Court of Ohio on writ of certiorari claiming the action violated the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

The Fifth Amendment appears to be totally irrelevant to this case and will not be discussed.

With regard to petitioner's contention that the proceeding before and judgment of the court below contravened the Sixth Amendment, it has been held by the Supreme Court of the United States that procedural safeguards for criminal contempt proceedings do not derive from the Sixth Amendment and that there is no Sixth Amendment right to a public trial in such proceedings. *Levine* v. *United States*, 362 U.S. 610, 4 L ed (2) 989, 80 S.Ct. 1038 (1969). By a parity of reasoning, there is likewise no Sixth Amendment right in a criminal contempt proceeding to the assistance of counsel for defence. The Sixth Amendment, then, as it relates to the states through the operation of the

Fourteenth Amendment does not support the contentions of petitioner.

The only question there can be is whether the action of the court offended "due process" concepts of notice and hearing.[1] And clearly the answer is that the conduct of this proceeding was not in violation of the Fourteenth Amendment.

As the record in this case shows, petitioner was personally served on May 6, 1963 with an order to show cause why he should not be found in contempt of the October 21, 1959 order of the court, for filing a notice of appeal to the Supreme Court of Ohio and for filing an assignment of errors and a brief in the case of *Eidmiller* v. *Kerns*, No. 298, Court of Appeals, Union County, Ohio, and why the suspension of imposition of sentence against him should not be raised. The record also shows that petitioner was served with a citation by resident service on May 27, 1963 to appear on May 29, 1963 to answer the show cause order. Petitioner neither answered the show cause order nor appeared at the hearing on May 29, 1963. At the hearing on May 29, 1963, evidence was introduced to show that petitioner had knowledge of the hearing (May 29, 1963, Transcript p. 6) and evidence was introduced to show that the record of the case of *Eidmiller* v. *Kerns*, No. 298, Court of Appeals, Union County, Ohio, in which the petitioner filed an assignment of errors and brief was, pursuant to a notice of appeal by

---

[1] Refusing to respond to a show cause order and failing to appear in response to a citation and filing an appeal to the Supreme Court of Ohio in violation of a previous order of the Supreme Court of Ohio appear to be direct contempts of that court for they were taken in the presence of the court and no extrinsic evidence was needed to show such actions. However, because there was notice and a hearing under Section 2705.03, Revised Code of Ohio, the question appears academic. The third branch of the order of the Supreme Court of Ohio merely lifted the suspension of imposition of sentence for a prior contempt.

petitioner, filed in the Supreme Court of Ohio and is an official file of the Supreme Court of Ohio[2] (May 29, 1963 Transcript pp. 3, 4).

The proceeding on May 29, 1963 was conducted at the regular public session of the Supreme Court of Ohio for that date. A second hearing at the regular public session was accorded petitioner on November 19, 1963 at which petitioner failed to give adequate reason for his failure to appear at the May 29, 1963 hearing, and failed to show cause why he should not be found in contempt for the unauthorized practice of law (November 19, 1963, Transcript pp. 10, 13).

The adequacy of notice and the fairness of the hearing in this contempt proceeding are amply demonstrated by the record. But questions of adequacy of notice and hearing aside, it is manifest that petitioner failed to make timely objection to the procedures he now assails and it follows that such procedures were not, as to petitioner, contrary to the Due-Process Clause. *Levine* v. *United States*, 362 U.S. 610, 619, 4 L.ed. 989, 80 S.Ct. 1038 (1960).

Specifically, petitioner having knowledge of the hearing on May 29, 1963, on the show cause order served upon him on May 6, 1963, failed to appear for the hearing or to seek a continuance, and failed to ask the court to appoint counsel (until the day before his second hearing on November 19, 1963) and generally avoided (November 19, 1963, Transcript p. 12) all process of the court from May 27, 1963 until he was taken into custody by a sheriff on November 13, 1963.

---

[2] The record in this case was sent to the Supreme Court by the Court of Appeals in response to the notice of appeal filed by petitioner. It was not necessary to introduce the record into evidence, therefore, to bring it before the Supreme Court of Ohio but it was done for the purpose of making a complete transcript. The appeal was never perfected by the petitioner.

In summary, the record and the evidence fail to show that the proceeding and judgment herein are in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and the petition is not well taken.

VI.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED

There is no substantial federal question raised by this petition for certiorari within the meaning of Rule 19 (1) (a) of the Supreme Court Rules, and there are no special and important reasons for granting the writ.

The decision of the Supreme Court of Ohio decided no federal question either expressly or by the reach of its judgment. The dimensions of the judgment in this case are confined to the authority of the highest court of a state to control the practice of law in the state and the action of the court in this case was necessary to punish conduct tending "directly to prevent the discharge of * * (its) functions." *Wood v. Georgia*, 370 U.S., 375, 8 L ed. (2) 569, 82 S.Ct. 1364 (1962).

The claim that constitutional rights were infringed by the proceeding in contempt in the state court is raised here for the first time. This is shown by the motion to vacate the judgment of the Supreme Court of Ohio the substance of which is that petitioner was not guilty of contempt and that a special master should be appointed to hear evidence.

Petitioner does not, by his petition, raise the question of the operation or application of a state statute or raise a question as to the effect of established judicial practice but, in reality, seeks a review of the judgment of the state court on the basis that the court should have permitted the petitioner to introduce evidence at still a third hearing to

explain the actions of petitioner; actions which were within the very presence of the court itself. At the very most this proceeding in contempt was episodic and unique and the judgment of the Supreme Court of Ohio is not a proper one for review on certiorari. *Rice* v. *Sioux City Memorial Park Cemetery*, 349 U.S. 70, 99 L. ed. 897, 75 S.Ct. 614 (1954); *United States* v. *Constantine*, 296 U.S. 287, 80 L ed. 233, 56 S.Ct. 223 (1935).

VII

MOTION TO DISMISS

For the foreging reasons and based upon the foregoing authorities, the respondent moves that this petition in the alternative for writ of certiorari be dismissed.

Respectfully submitted,

WILLIAM B. SAXBE,
Attorney General.
LARRY H. SNYDER,
Chief Counsel,
State House Annex, Columbus, Ohio,
Attorneys for Respondents.

Office-Supreme Court, U.S.
FILED
MAR 16 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Case No. 767

In the Matter of the
UNAUTHORIZED PRACTICE OF LAW

In re J. HARVEY CROW, *Appellant*

On Appeal From the Supreme Court of Ohio

REPLY BRIEF TO MOTION TO DISMISS

J. HARVEY CROW
St. Paris, Ohio
In Propria Persona

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Case No. 767

In the Matter of the

UNAUTHORIZED PRACTICE OF LAW

In re J. HARVEY CROW, *Appellant*

On Appeal From the Supreme Court of Ohio

REPLY BRIEF TO MOTION TO DISMISS

STATUTE INVOLVED

Ohio R. C. 2945.12 When accused may be tried in his absence.

> "A person indicted for a misdemeanor, upon request in writing subscribed by him and entered in the journal, may be tried in his absence by a jury or by the court. No other person shall be tried unless personally present, but if a person indicted escapes or forfeits his recognizance after the jury is sworn, the trial shall proceed and the verdict be received and recorded. If

the offense charged is a misdemeanor, judgment and sentence shall be pronounced as if he were personally present. If the offense charged is a felony the case shall be continued until the accused appears in court, or is retaken."

STATEMENT

In the statement of the case in the motion filed to dismiss the appeal it is correctly stated that an application was filed in the Supreme Court of Ohio by the Unauthorized Practice of Law Committee of the Ohio State Bar Association on October 1, 1958. Phillip K. Folk signed said application as counsel for the applicants and represented said committee as its attorney.

An answer was filed denying the allegations of the application and setting up four affirmative defenses. The Ohio Supreme Court, without assigning the case for trial, without a hearing, without any evidence, did on the 26th day of June, 1959, find the appellant, J. Harvey Crow, guilty of criminal contempt of court.

An application was filed by J. Harvey Crow for rehearing requesting the court to vacate its own order. On October 21, 1959, the court granted the application and vacated its own order of June 26. On the same day, without any evidence, or without any trial, the Ohio Supreme Court entered an order finding J. Harvey Crow guilty of contempt and ordered him

> "to cease forthwith the practice of law and the holding out of himself, in any manner and in any court, as an attorney at law."

On May 3, 1963, Lyman Brownfield filed an application in the Supreme Court of Ohio. A copy of said application is found in Appendix pages 1a thru 4a.

Service of the application and order to show cause was made on the appellant May 6. J. Harvey Crow filed a motion with the court to extend the time to answer to June

15, 1963, to enable J. Harvey Crow to secure legal counsel and have them present this matter to the Ohio Supreme Court. Being unable to secure legal counsel by June 15, the appellant filed a motion to make the application as set forth in *a* to *h*, inclusive, definite and certain. The court did not rule upon this motion, but in compliance with said motion there was filed and sworn to by William B. Saxbe, Attorney General of Ohio, supplement to application.

At the hearing on May 29 and November 19 there appeared Larry Snyder, Chief Counsel in the Attorney General's Office, to prosecute this action. When Larry Snyder appeared in these proceedings, appellant took for granted that he was representing the Committee for the Unauthorized Practice of Law.

It was not until the motion to dismiss the appeal was filed that his true status was disclosed. It says

"As Attorney for the Supreme Court of Ohio"

It is interesting to note that the full resources of the Attorney General of Ohio are on one side of this case and a small insignificant citizen is being prosecuted. It is also significant that the court itself was being represented in these proceedings rather than the committee.

Why does the Supreme Court of Ohio, which is supposed to be a fair, just, unbiased tribunal, need an attorney to represent it in a criminal contempt proceeding which it is hearing?

Why should the Supreme Court of Ohio have its attorney file anything in a proceeding to vacate, reverse, or modify its own decision?

What right does the Supreme Court have to have its attorney prosecute and then try to uphold its own decision in the United States Supreme Court? In other words the full resources of the Attorney General's office and the full resource of the Ohio Supreme Court, the trial court in this

case, have been used to find the appellant, who is only one of ten million people in Ohio with no financial backing, guilty of criminal contempt.

The committee has never appeared in this case after filing its application.

An examination of the application shows 26 lawyers on that committee. Surely one could have appeared for the committee instead of the Ohio Supreme Court having its own attorney to prosecute.

CONTEMPT NO. 1.

The Supreme Court found the appellant guilty of criminal contempt of court in practicing law as appears from the record filed in this court in the case of *Eidmiller* v. *Kerns* on appeal from the Court of Appeals from Union County as shown by the entry Appendix 2a, Jurisdictional Statement.

In item 6 in said entry the court found that

> "Respondent did practice law as stated in said show cause order of May 6, 1963."

On page 7 of the motion to dismiss filed by the Attorney General of Ohio as the attorney for the Supreme Court of Ohio it says:

> "evidence was introduced to show that the record of the case of Eidmiller v. Kerns, No. 298, Court of Appeals, Union County, assignment of errors and brief was, pursuant to a notice of appeal by petitioner, filed in the Supreme Court of Ohio and is an official file of the Supreme Court of Ohio (May 29, 1963, Transcript pp. 3, 4)."

It does show a file entitled *Eidmiller v. Kerns* was *offered into evidence*. It had not been filed in the Supreme Court of Ohio—Affidavit Jurisdictional Statement.

On November 19, Mr. Snyder said,

> "Notice of appeal was filed in the Court of Appeals of Union County and their files *were sent here.*"

There is a great difference between *were sent here* and *filed in Supreme Court.* There is absolutely no evidence in this case at any time or any place that this appellant prepared anything, filed anything, or did anything in the case of *Eidmiller v. Kerns*, except the court saying in its order of May 6, that unless a written answer positively verified, specifically denying the statement made therein shall be taken as true. We cannot believe that any court can establish a fact in a criminal contempt proceeding for the purpose of finding a person guilty in such a manner.

Just as conviction upon a charge not made would be sheer denial of due process,[1] so is it a violation of due process to convict and punish a man without evidence of his guilt.[2]

There certainly should not be any distinction between the manner of proving guilt against a person charged with a misdemeanor and a person charged with criminal contempt.

Conviction of the appellant was based upon the file introduced into evidence on May 29, when the appellant was not present, had not been personally served, was outside the state, and had not received a copy of the order until after May 29. See Record.

Reading the Ohio Statute on contempt would indicate that the accused should be present when any trial is had. Ohio R. C. 2945.12 provides that no person shall be tried unless personally present. However, if charged with a misdemeanor, and the person so charged request in writing, he may be tried in his absence. Surely a person charged with criminal contempt where the penalty imposed could be more severe than many misdemeanors should be afforded the same protection as those charged with crimes. They

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[1] *Dejonge* v. *Oregon*, 299 U.S. 353; *Cole* v. *Arkansas*, 333 U.S. 196.

[2] *Thompson* v. *Louisville*, 363 U.S. 199; *Schware* v. *Board of Bank Examiners*, 353 U.S. 232; *Moore* v. *Dempsey*, 261 U.S. 86; *Yick Wo* v. *Hopkins*, 118 U.S. 356; *Tot* v. *U. S.*, 319 U.S. 463, 473.

would be incarcerated in the same dark, cold, bleak place. It has the same hard sheer steel bars, the same iron bed with the same cold cement flooring, the same dingy eight by ten room for three occupants, whether it be criminal, contempt or petit larceny.

Each individual should have the same protection of the law. *Thompson* v. *Louisville*, 363 U.S. 199, protects a person against a misdemeanor. This court should protect a person against criminal contempt proceedings.

In a footnote on page 7 of the Motion to Dismiss, a statement was made that there was notice and a hearing. There was not a single piece of evidence introduced against this appellant on May 29, even though he was not present.

On page 8 the footnote says the record was sent to the Supreme Court in response to the notice of appeal *filed* by petitioner. There is no evidence that the appellant's signature appears on the notice of appeal. There i no evidence that he authorized anyone else to sign his name. In other words, there is not one piece of evidence in this record that any instrument was signed by the appellant.

Item 5 of the Entry of November 19, found in the Jurisdictional Statement, Appendix 1a, says the appellant has done nothing to comply with the show order of May 6 and made no attempt to appear before this court prior to November 13, 1963. The clerk's office discloses that the appellant sent a telegram to the court from Chicago advising them that the appellant would have counsel contact the court as soon as counsel could be obtained and would personally contact the court upon return to Ohio. Affidavit, Appendix 5a, *infra*, shows that the appellant did contact a judge of the Supreme Court of Ohio upon his return to Ohio, and the finding made by the court on November 19, in item 5 was erroneous.

It is hard to understand why the appellant was ordered to appear on May 29, for one specification and given until June 15, to answer the others.

It is still more difficult to understand why the Supreme Court of Ohio should overrule a motion filed by the appellant December 31, 1963, to have all the specifications set down for hearing either before the court or a special master.[3] Appendix 7a.

Assuming that personal service was not necessary, resident service was made on May 27, for hearing on May 29. It only gave the appellant approximately thirty-six hours' notice. That period of time is inadequate and did not give the appellant proper opportunity to appear, secure counsel, and defend.

The failure to give reasonable notice is a violation of the due process clause.[4]

Prior to May 13, the appellant filed a motion stating that one week's notice was inadequate time to employ counsel and have them properly represent the appellant before the Supreme Court of Ohio and requested until June 15 to do so. Having heard nothing from the Supreme Court, the appellant went to Chicago on business expecting to be given time to employ counsel and have a hearing in which he would be present.

The attorneys approached prior to May 25 were reluctant to get involved in a criminal contempt action, so therefore on June 14, this appellant wrote to a great number of lawyers in Ohio outlining the situation as he understood it. A copy of the letter is in the record. The attorneys that answered were reluctant to accept employment, because they thought the judges of the Supreme Court were directly involved as well as the Ohio State Bar Association. They had no desire to get themselves involved. Several lawyers did agree to act as counsel, but the fees set were not within the realm of this appellant's

[3] Said motion was overruled January 22, 1964.

[4] *Powell* v. *Alabama*, 287 U.S. 68; *Snyder* v. *Mass.*, 291 U.S. 96; *Holm* v. *Conway*, 241 U.S. 624.

ability to pay. Appellant is sure that they were set so high, so the appellant would not employ them.

After discussing with one of the judges of the Supreme Court of Ohio how to get this matter that was pending against the appellant terminated, said judge suggested that the appellant employ an attorney and have him contact the court for a date to appear before the court. The appellant followed those instructions explicitly. Appendix 5a and 6a.

On the 14th day of November the appellant was detained by the sheriff of Champaign County and released under $10,000.00 bond by the Supreme Court of Ohio. The appellant was ordered to appear November 19. On November 18, an application was filed by the appellant for the court to appoint counsel for the said J. Harvey Crow.

On November 19, when the appellant appeared in person before the court, the record shows that the appellant again requested the court to appoint counsel, and one of the judges inquired what efforts were made to obtain counsel. Most of the 22 pages of the record on November 19 consist of and relate to the appointment of counsel for the appellant.

The question is, is a person charged with criminal contempt entitled to appointment of counsel?

In 1963, less than a year ago, this Honorable Court, speaking through the Honorable Justice Black, held that the Sixth Amendment guaranteeing right of counsel is one of the fundamental rights in the provision of the Bill of Rights which is fundamental and essential to a fair trial. It is made obligatory upon the states by the Fourteenth Amendment.

The assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. *Gideon* v. *Wainwright*,

372 U.S. 335 (March 18, 1963).[5] Also *Hudson* v. *N. Carolina*, 363 U.S. 697 (1960).

It has been decided that there is a constitutional right to counsel in a criminal contempt proceeding growing out of a state investigation.[6]

The appellant was denied this fundamental right unless it can be said since he was not indigent he was not entitled to such assistance.

There certainly cannot be much difference between being unable to hire an attorney for the lack of funds or being unable to employ an attorney because the attorneys were afraid of being jeopardized on their behalf either by the court or the Bar Association as was indicated by the appellant to the court in the hearing on November 19, as shown in the record.

This Court has held that in a non-capital offense, if the accused in a state criminal prosecution has not had an opportunity to employ counsel, and his efforts in his behalf to employ counsel have been unavailing, the Constitution requires that the trial court either allow him a continuance in order to retain a lawyer or appoint counsel for him.[7]

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[5] Justice Black in the Gideon Case said any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be the obvious truth. Government, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses.—Defendants who have the money hire lawyers to defend are the strongest indications of the wide spread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.

[6] *In Re Oliver*, 333 U.S. 257.

[7] *Cash* v. *Culver*, 358 U.S. 633 (1959).

Motion and brief to dismiss this appeal shows it was not made by the committee that filed the application but by the attorney for the court. They have never appeared since filing the application.

How can the Attorney General lose this action, when he has his client on the bench? What kind of justice do we have in Ohio, when the attorney for the court appears to prosecute a case?

This in itself requires that the appellant be given aid of legal counsel. The failure to do so surely is a denial of the due process clause.

One charged with violating any order or statute which might lead to conviction and incarceration in a jail is not in a state of mind or body to properly represent himself. He is a nervous, frustrated individual, not able to think clearly. He is not able to conduct or question the proceedings. Appellant knows, he was present. One not able to secure counsel, charged with criminal contempt certainly is in the same position as an indigent person charged with a crime, whether it be a misdemeanor or felony.

In the case of J. Harvey Crow, appellant, if the fine and jail sentence is allowed to stand, then appellant would have to serve about one and a half years in the county jail to pay the fine and costs (at $3.00 per day) and the thirty days imposed by the Ohio Supreme Court.

The failure of the court to appoint counsel or assist the appellant to have counsel is a violation of the due process clause. We trust this court will pass upon this important question.

CONTEMPT NO. 2

J. Harvey Crow, the appellant, was found guilty of criminal contempt as is shown in the Appendix 1a in the Jurisdictional Statement. The judgment of the court is in three branches. We will consider these branches separately.

In the language of the court

> "It is therefore Ordered, Adjudged and Decreed that respondent be fined $500 and imprisoned in the Franklin County Jail for ten days for contempt of this court demonstrated by his willful and continued failure to comply with the orders of this court issued to him on May 6, 1963, and May 22, 1963."

The facts relating to the order May 6, as is shown by the entry, Appendix 1 in the Jurisdictional Statement, refer to items 1, 2, 3, 4, and 5. A careful examination of the order to show cause served upon J. Harvey Crow on May 6 does not require J. Harvey Crow to do anything. Certain facts are set forth in the order to show cause found in the Jurisdictional Statement, pages 3a and 4a. The court said:

> "any of the facts with reference to the said appeal which are recited above and are not specifically denied by written answer positively verified shall be taken as true and as evidencing violation of the former order of this Court finding the said J. Harvey Crow in contempt."

The court must have contemplated that no answer would be filed, and it could hardly be said that J. Harvey Crow, in failing to file an answer, willfully failed to comply with the orders of this court. There were two orders on May 22

1. Extend the time to May 29 to answer specification A
2. A citation to appear in person on May 29, to answer specification A.

Said citation was issued by the court to the deputy marshal for service. The court must have thought personal service was required. Otherwise they would not have prepared the marshal's return, as is shown in the Appendix 4a of this reply brief. The marshal, not having been able to serve J. Harvey Crow, personally left it at his usual place of residence on the 27th day of May, 1963. This was only thirty six hours prior to the time that J. Harvey Crow was ordered into court. This was at a time that the appellant was on business in Chicago, Washington, D. C., and New York City.

On page 7 of the brief of the motion to dismiss, it says:

> "At the hearing on May 29, 1963, evidence was introduced to show that petitioner had knowledge of the hearing (May 29, 1963, Transcript p. 6)."

The appellant has not been afforded a copy of the transcript of the hearing even though one has been requested. He was permitted by the court reporter to see such transcript in the later part of February, 1964. See Affidavit No. 2. (Appendix 8a)

The evidence referred to was testimony by the clerk of the Supreme Court of Ohio to the effect that Mrs. Crow called the clerk and advised him that the appellant, J. Harvey Crow, was outside the state and wanted a continuance on the hearing until he returned. He further testified that Mrs. Crow told him that Mr. Crow knew about the hearing date on May 29.

First there is no competent evidence that Mrs. Crow did call. The appellant is sure that McMillam, the clerk, would not recognize Mrs. Crow's voice. It could have been the secretary from any office.

For the trial court to accept into evidence a statement of the clerk that someone told him over the telephone that the appellant had actual notice of a hearing date without any further proof is a violation of all rules of evidence. It

certainly would be *hearsay* evidence. For the Supreme Court of Ohio to prove notice of a hearing date by such *hearsay* evidence is a violation of the rules of evidence, a violation of the appellant's right to personal notice and service and the due process of law.

On the November 19 hearing, the appellant admitted that he received a copy of the order of May 22, through the mail, and it was received sometime after May 29. Under these circumstances it is impossible for the appellant to comply with the order May 22. Since it is shown he was not required to do anything under the order of May 6, the order of November 19 finding the appellant guilty of criminal contempt, demonstrated by his willful and continued failure to comply with orders of this court issued to him on May 6 and 22, 1963, is unfounded in fact. There is not one single fact in any record in this case to substantiate such finding by any competent piece of evidence.

Assuming that the appellant is in error in that there are no facts established by competent evidence, the trial court could not judge the appellant guilty of contempt until charges had been filed against the appellant in accordance with Ohio R. C. 2705.02.

The court itself used the word orders of May 6 and 22. Therefore it was the right of the appellant to be notified in writing by filing the same with the clerk, having an entry made upon the journal, and an opportunity to be heard by himself or counsel[8] as provided in Ohio R. C. 2705.03. The Ohio R. C. 2705.05 provides a day for trial and an opportunity to have the court investigate the charges and hear the answer of the accused or any testimony he offers. None of these rights were afforded the appellant.

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[8] It has been decided that there is a constitutional right to counsel in a criminal contempt proceeding growing out of a state investigation conducted before a judge sitting as a "one man Grand Jury." *In Re Oliver*, 333 U.S. 257.

This right to counsel was denied this appellant on this criminal contempt proceeding. As a matter of fact the appellant, J. Harvey Crow, did not know nor understand the court had under consideration any contempt as to item 2 set out.

He was aghast when Judge Taft read the Journal Entry passing sentence in this regard.

Finding the appellant guilty of criminal contempt was a violation of due process.

We believe this court should accept jurisdiction and decide the issue of this case.

CONCLUSION

Under our jurisprudence, the accused in a criminal contempt proceeding is entitled to

1. presumption of innocence,
2. not be compelled to testify against self,
3. advised as to charges against him,
4. reasonable time to prepare a defense,
5. benefit of compulsory process,
6. assistance of counsel,
7. an impartial arbiter of the facts.

A failure to give the accused any one of these rights is a denial of the due process clause.

An examination of the records in this case show the appellant was denied 5 or 6 of the rights set forth in each of the two findings of contempt against him.

Imposing the suspended sentence of October 21, 1959 would have to fall if the other two contempts are vacated. Therefore no time has been spent on that problem.

Appellant believes the questions presented in the Jurisdictional Statement are disclosed by the record, in favor of the appellant and need to be answered by this Honorable Court.

Appellant believes the federal questions presented are substantial and deserve plenary consideration by this court.

The motion to dismiss filed by William B. Saxbe, Attorney General of Ohio, as attorney for the Supreme Court of Ohio, should be overruled and this Court should admit this case for hearing on the merits.

Respectfully submitted,

J. Harvey Crow
St. Paris, Ohio
In Propria Persona

APPENDIX

IN THE SUPREME COURT OF OHIO

No. 35825

In the Matter of the

UNAUTHORIZED PRACTICE OF LAW

In re J. HARVEY CROW

Application

This is a continuation of the special proceeding commenced in this Court in October of 1958. This Application is submitted for the attention of this Court by the Chairman of the Unauthorized practice of Law Committee of the Ohio State Bar Association (who was one of the Applicants in the proceeding originally), pursuant to direction of that Committee and the authority of the Executive Committee of the Ohio State Bar Association. It is submitted on behalf of the Unauthorized Practice of Law Committee and the Ohio State Bar Association in discharge of the obligation of the members of the Bar of this Court to assist this Court in the administration of justice in the State of Ohio.

J. Harvey Crow, who is a disbarred attorney and not admitted to the practice of law in the State of Ohio, had engaged in numerous activities constituting the practice of law, which are a fraud upon the public and are in contempt of this Court. Pursuant to the Application filed in this proceeding in 1958, J. Harvey Crow was found to be in contempt of this Court and punishment suspended.

Since 1958 and up to the present time, respondent Crow has both openly and by a variety of fraudulent stratagems and concealments continued to practice law in Ohio, in flagrant violation of the rights of the public and in contempt of this Court. In addition to his overt practice,

among the fraudulent devices adopted by J. Harvey Crow and known to the Unauthorized Practice of Law Committee are the following:

a. The performance of legal services for a corporation, including the conduct of litigation, ostensibly as Corporate Secretary, a position procured by J. Harvey Crow for the sole purpose of affording a shield for the unauthorized practice of law.

b. The performance of legal services for individuals under color of a power of attorney.

c. Holding himself out as an attorney at law for the purpose of representing individuals for whom he employs other counsel to make court room appearances.

d. The conduct of litigation for persons under color of an assignment of an interest in property or a cause of action, such assignment being colorable only and obtained solely as a shield for the unauthorized practice of law.

e. Performance of legal services upon incorporation of a company under color of participation as a principal.

f. The performance of legal services under the pretense of acting as an "investigator."

g. The preparation of pleadings in court cases for signature and filing by individuals ostensibly acting on their own behalf.

h. The preparation of instruments in court cases, the signing of the name of another attorney thereto and then filing such instruments with court functionaries.

The conduct of J. Harvey Crow in continuing to practice law, both overtly and covertly, is in contempt of this Court and in violation of the condition of suspension of punish-

ment for early contempt, and if permitted to continue will result in great damage to the public and to the administration of justice.

WHEREFORE Applicants pray for the issuance of an order to the said J. Harvey Crow to show cause why he should not be punished for his conduct in deliberate contempt of this Court and in violation of its former orders, and that this Court make and issue such other appropriate orders as may be necessary in the premises to protect, maintain and preserve the constitutional authority and responsibility of this Court, and to this end enlist the entire resources of the Court, and the Association to which Applicants belong, for the purpose of implementing the necessary and appropriate instructions and orders of the Court in these premises.

LYMAN BROWNFIELD, CONRAD MAGRISH,
SAM F. SPOERL, JR., ROBERT M. BROWN,
CHARLES H. BOESCH, GRAFTON S. KENNEDY, JR.
RALPH S. BOGGS, ROBERT J. W. MEFFLEY,
MYRON E. CLICK, MERRITT W. GREEN,
ROBERT L. BROWN, RICHARD P. RANKIN,
LEWIS A. RANKIN, RICHARD L. EISNAUGLE,
RAY MILLER, H. RAMOND LINDAMOOD,
PATRICK O. SIMON, JOHN L. WOLFE,
RAYMOND E. COOKSTON, JOSEPH SASLAW,
ALBERT R. TEARE, WILLIAM W. WEIR,
EDWARD ROBERTS, WILLIAM K. YOST,
ALTON L. RINIER, JAMES R. STEPHENSON.

Chairman

STATE OF OHIO }
FRANKLIN COUNTY } ss:

Lyman Brownfield, having been first duly sworn, says that he is the Chairman of the Unauthorized Practice of Law Committee of the Ohio State Bar Association, a member of the Bar of this Court and one of the Applicants herein, and that the facts and allegations contained in the foregoing Application are true.

LYMAN BROWNFIELD

Sworn to before me and subscribed in my presence this ..... day of May, 1963.

Notary Public

BEFORE THE SUPREME COURT OF OHIO

Citation

TO THE DEPUTY MARSHAL:

You are commanded to notify J. HARVEY CROW, 363 N. High Street, Columbus, Ohio or St. Paris, Ohio, that he has been cited to appear in person before The Supreme Court of Ohio, State House Annex, Columbus on Wednesday, May 29, 1963 at 10:00 o'clock A.M. then and there to answer to Specification A of an Application filed in this Court on May 3, 1963 which application together with an Order to Show Cause was served on J. Harvey Crow on May 6, 1963.

You shall make due return of service forthwith.

C. WILLIAM O'NEILL

MARSHAL'S RETURN

On this 22nd day of May, 1963, I served the above named J. Harvey Crow by personally handing him a true and correct copy of the above Citation.

Deputy Marshal

IN THE SUPREME COURT OF OHIO

Case No. 35825

In the Matter of the

UNAUTHORIZED PRACTICE OF LAW

In re J. HARVEY CROW

Affidavit

STATE OF OHIO)
FRANKLIN COUNTY) ss:

J. Harvey Crow, being first duly sworn, deposes and says that on or about October 7, 1963, this affiant called a Judge of the Supreme Court of Ohio by telephone. Said telephone call was made from Columbus to the said Judge's office located in the Capitol Building Annex, Columbus, Ohio.

This affiant advised said Judge he had returned to Ohio and requested permission to come to see said Judge. This affiant was advised by the Judge that this was not necessary. This affiant further says he requested that said Judge advise said affiant what to do to get the proceedings instituted against him terminated. Said Judge told this affiant to employ an attorney, have said attorney so employed contact the Court and make a date for appearance before the Court.

This affiant did as directed and personally contacted two or three lawyers every week from said date on, for the purpose of obtaining counsel to arrange for such appearance and to represent this affiant at any hearing.

A few of the attorneys personally interviewed are as follows: Kusworm and Kusworm, Mason Douglas of Dayton, Ohio, Guy Martin, Robert L. Summers, Gordon Bolon, and Clyde Elliott of Columbus, Ohio, Jack Day and

William Blake of Cleveland, Ohio, Forest E. Blankenship of Troy, Ohio.

Some of the attorneys contacted referred me to others and were too busy to accept employment at said time. These contacts were made to carry out the Judge's request to arrange my appearance before the Supreme Court.

This affiant further says that one attorney, Robert L. Summers, did go to the office of the Clerk of the Supreme Court of Ohio, Columbus, Ohio, advised said office that this affiant had contacted him requesting the said Mr. Summers to represent this affiant in said matter. The Clerk's office showed the said Mr. Summers the files and all the applications and orders in said files. Said Mr. Summers tried to find out if the respondent, J. Harvey Crow, would be given a hearing on the Application, but was given no such assurance.

This affiant says that the above facts regarding the personal telephone contact of the respondent, J. Harvey Crow, with a Judge, and the personal contact of Mr. Summers with the Clerk's office, were known to the Court on November 19, 1963, or should have been known to the Court at said time.

That from the above facts, the second portion of Item 5 of the entry of November 19, 1963, is erroneous, and known by the Court to be untrue at the time it was made. The portion of Item 5 referred to follows: "Respondent made no attempt to appear before this Court prior to November 13, 1963."

This affiant says he made no attempt to contact the Court on November 13, 1963, but on November 14, 1963, the Court for the first time since June set a new date for the appearance of the respondent, J. Harvey Crow, before the Court; to wit November 19, 1963, at which time the

said J. Harvey Crow appeared as requested after being personally served to appear.

Further this affiant sayeth not.

/s/ J. Harvey Crow
J. Harvey Crow

Sworn to before me and subscribed in my presence this 25th day of November, 1963.

Thomas S. [Illegible]
Notary Public
Attorney-at-Law
Notary Public—State of Ohio

Filed Dec. 31, 1963

IN THE SUPREME COURT OF OHIO

No. 35825

In the Matter of the

Unauthorized Practice of Law

In re J. Harvey Crow

Application to Assign Case for Hearing

This respondent respectfully requests this Hon. Court to assign the Application and Supplement to Application for hearing, either before a special master or before this Hon. Court or a member thereof so that if there is any finding against the respondent in regards to items b to h inclusive, or 1-5 inclusive this whole case can be presented to the U. S. Supreme Court at one and the same time.

Respectfully submitted,

J. Harvey Crow

Proof of Service

I hereby certify that I mailed a copy of the above answer to Larry Snyder, atty. for committee, this .... day of December, 1963.

J. Harvey Crow

Affidavit No. 2

STATE OF OHIO }
FRANKLIN COUNTY } ss:

J. Harvey Crow, being duly sworn, deposes and says that this affiant went to the office of the Clerk of the Supreme Court of Ohio on or about the 21st day of Feb. 1964 and requested a copy of the transcript of the proceedings on May 29, 1963.

Said office denied such request and refused to show this affiant such a copy.

Thereafter this affiant went to the office of Ed Hammock, who was employed by the Supreme Court of Ohio to make a record of those proceedings and requested the reporter to give or to sell a copy to J. Harvey Crow, this affiant. Said request was refused.

This affiant again on the 12th day of March, 1964 went to the office of Ed Hammock, and said reporter again refused to give or to sell a copy to said J. Harvey Crow.

Affiant took his photocopy machine to Ed Hammock's office on March 12, 1964 and said Ed Hammock refused J. Harvey Crow permission to make a copy on his photocopy machine.

Further this affiant sayeth not.

/s/ J. HARVEY CROW

Sworn to before me and subscribed in my presence this 12th day of March, 1964.

/s/ OLIVE G. ANDERSON
(Seal) *Notary Public.*

Olive G. Anderson
Notary Public, Franklin County, Ohio
My Commission Expires March 19, 1964

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Case No. 767

In the Matter of the
UNAUTHORIZED PRACTICE OF LAW
In re J. HARVEY CROW, *Appellant*

On Appeal From the Supreme Court of Ohio

PETITION FOR REHEARING

J. HARVEY CROW
St. Paris, Ohio
In Propria Persona

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Case No. 767

In the Matter of the

UNAUTHORIZED PRACTICE OF LAW

In re J. HARVEY CROW, *Appellant*

On Appeal From the Supreme Court of Ohio

PETITION FOR REHEARING

To the United States Supreme Court and the Justices Thereof:

J. Harvey Crow, appellant, in the above entitled cause, presents this, his petition, for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

I.

The order of the trial court made on October 21, 1959, and the sentence imposed by the trial court on November

19, 1963, was in violation of the Constitution of the United States and Amendment Five and Amendment Six and enforced on the states by Amendment Fourteen of the United States Constitution as is shown by the record in this cause. The record shows the following facts.

a. A charge of contempt was first made on October 1, 1958, in the Supreme Court of Ohio in Case No. 35825.

b. This appellant filed an answer denying the allegations in the application, and in addition thereto set up four affirmative defenses, anyone of which if proven to be true would be a complete defense to said charge.

c. Without assigning the cause for hearing, without any evidence, without any hearing, the trial court did on the 26th day of June, 1959, find the appellant guilty of contempt of court. An application for rehearing was filed by the appellant and on October 21, 1959, the trial court did vacate its own entry and judgment.

d. On October 21, 1959, without assigning the cause for hearing, without a hearing, without any evidence, without notice to the appellant, the trial court entered judgment finding this appellant guilty of contempt of court, but suspended the imposition of any penalty.

e. November 19, 1963, imposed the maximum sentence allowed by the Ohio Statute without any evidence showing that the appellant had violated any order of the court.

II.

On May 3, 1963, another application was filed.

a. The trial court did proceed to hear part of the matter on May 29, 1963, without any personal notice to the appellant. It did proceed to take evidence at said time when the appellant was not present, nor

represented by counsel. The evidence so offered and received on said date did not show that the appellant did any act that violated any court order.

b. On November 19, 1963, without hearing any further evidence and without assigning the matter for hearing or trial, did make a finding that is not substantiated by the record by finding the appellant guilty of contempt of court under Specification A.

III.

The trial court refused to give the appellant assistance of counsel as is shown by the record on November 19, 1963.

IV.

The order entered on October 21, 1959, is not definite and certain. The order is so indefinite and uncertain as to violate the due process clause of the Constitution of the United States and its Amendments thereto.

V.

The finding by the trial court that the appellant willfully failed to comply with orders issued May 6 and 22 without the filing of any charges as provided under Chapter 2705 of the Revised Code of Ohio was a violation of the due process clause under which the appellant should be afforded protection.

a. There were no charges filed regarding this item as set out in the entry finding the appellant guilty of contempt of court.

b. This item was never assigned for hearing and no evidence was ever taken.

This appellant sincerely believes that the due process of law as guaranteed to him under the Fifth and Sixth Amendments and enforced on the states under the Four-

teenth Amendment of the Constitution of the United States was violated. This appellant sincerely believes that the questions presented in the Notice of Appeal and also found in the Jurisdictional Statement are of such importance to all the citizens of the United States that this Honorable Court should admit this case, as a petition for certiorari.

The following five questions are of such importance that we should like to have this court accept jurisdiction and allow this appeal as a petition for writ of certiorari.

QUESTIONS PRESENTED

1. Did the Supreme Court of Ohio deprive the appellant of due process of law as guaranteed to him under the 5th, 6th Amendments and enforced on the States under the 14th Amendment to the United States Constitution by finding the Respondent-Appellant guilty of criminal contempt of court on November 19, 1963, for willful and continued failure to comply with orders issued to him on May 6 and May 22, 1963, without

(1) The filing of any charges or

(2) giving Respondent-Appellant any time to prepare a defense and

(3) refusing to appoint counsel to assist the respondent-appellant.

(4) presenting no evidence against respondent-appellant.

(5) refusing a trial or hearing on the orders of May 6th and May 22nd, 1963, all which is in violation of the statutes of Ohio.

2. Did the Supreme Court of Ohio deprive the Respondent-Appellant of due process of law as guaranteed to him under the 5th and 6th, Amendments and enforced on the States under the 14th Amendment to the United States Constitution, by finding the Respondent-Appellant guilty

of criminal contempt of court on an application by the Bar Committee under specification "A" without,

(1) hearing any evidence

(2) assigning the matter for hearing or trial

(3) attempting to compel the respondent to testify against himself

(4) refusing to give respondent assistance of counsel

(5) making a finding of fact without any evidence

(6) attempting to establish a fact through failure of respondent to answer under oath.

3. Did the Supreme Court of Ohio deprive the Respondent-Appellant of due process of law as provided in the 5th and 6th Amendments and enforced in the States under the 14th Amendment of the Constitution by failure to make its order of October 21, 1959, definite and certain especially after the respondent has set forth in his Answer of January 21, 1959.

Said order is indefinite and uncertain, and the Ohio Supreme Court had never previously determined what is or what is not the practice of law.

4. Did the Supreme Court of Ohio deprive the appellant of due process of law as guaranteed to him under the 5th and 6th Amendments and enforced on States under the 14th Amendment of the United States Constitution, by finding said appellant guilty of criminal contempt of court, without providing a hearing of the charges or an opportunity to the Respondent-Appellant to offer evidence in support of the defenses which if proven would be a complete defense to any charges?

5. Did the Supreme Court of Ohio deprive the Respondent-Appellant in this criminal contempt proceeding of due process of law as guaranteed to him under the 5th and 6th Amendments of the United States Constitution and en-

forced on States under the 14th Amendment of the United States Constitution, in finding said appellant violated the order of said court and raising or lifting a suspension without a showing of any further violations of such order, in a proceeding in which the Respondent-Appellant was not afforded the following:

a. full knowledge of the charges against him;

b. reasonable time to prepare a defense;

c. benefit of compulsory process;

d. assistance of counsel;

e. presumption of innocence;

f. protection against being compelled to testify against himself.

We believe that the Jurisdictional Statement by the appellant, the Record as made in this case, and the Reply Brief by the appellant clearly show an error of the law that needs to be clarified for the protection of the millions of people that live within the United States.

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted and that the Jurisdictional Statement be considered as a petition for writ of certiorari and as such be allowed for further consideration by this Honorable Court.

Respectfully submitted,

J. HARVEY CROW
St. Paris, Ohio
In Propria Persona

I, J. Harvey Crow, appellant, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

J. HARVEY CROW